FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.

CRIMINAL APPLICATION NO. 4321 OF 2003
IN
CRIMINAL APPLICATION NO. 1256 OF 2005

Office Notes,Office Memoranda of Coram, appearnaces,Courts's orders or directions and Registrar's orders. :	: : : :	Court's or Judge's orders

A.S.Shitole A.P.P. for the State.

V.B.Tapkir for the respondent.

CORAM: V.G.PALSHIKAR AND
R.C.CHAVAN, JJ.

DATED: 24th June 2005.

P.C.:

. The application for condonation of delay in filing application for leave is allowed for the reasons mentioned in the application. Delay is condoned.

2. Heard learned A.P.P. on merits of the appeal filed against acquittal of the accused. The learned trial Judge has correctly marshaled the facts and has correctly appreciated the evidence in its proper perspective.

3. He has, in para-32 and 33, set up the entire case in a vast manner. These paras read as under:

32. Considering the over all evidence, the probabilities cannot be ruled out that, during scuffling the accused has received injuries upon his person, when he was acting in his self defence. Moreover, it has come on record that accused was not aggressive however it was the deceased who was the aggressive. In the background, Shri.Shivde has urged that, the accused has rightly exercised the right of private defence. During scuffling his clothes were torn and he received injuries. Moreover, there is a material inconsistency with regard to weapon, during medical evidence and of eye witnesses. Similarly, the description of the weapon is also not duly proved. In the background, the prosecution has failed to prove its case beyond reasonable doubt, and, therefore, the accused is entitled for acquittal.

33. Considering the facts and circumstances of the case I am of the view that, the accused has rightly exercised the right of private defence. He was not aggressive party. On the other hand, deceased and prosecution witnesses were aggressor. When prosecution has come up with the case that because of assault by weapon (Article 9), deceased received injuries and died, it was incumbent upon it to prove that, Article-9 is the same weapon by which the deceased received injuries. However, the prosecution has failed to prove the satisfactory. Moreover, C.A. report also does not support the prosecution case. The blood group found upon tocha (Article-9) is inconclusive. For all the reasons, having regard to the facts and circumstances, of the case, I am of the view that, prosecution has failed to prove its case beyond reasonable doubt, that accused has committed murder of Santosh Vasu Padaytil....."

4. In view of the clear-cut findings and

proper appreciation of evidence as

disclosed by the paras quoted above, it is obvious that no error in appreciation of evidence or any other illegality has committed by the learned trial Judge while acquitting the accused. In the present case, in our opinion, there is no reason to grant leave to file appeal.

Application for leave is rejected.

(R.C.CHAVAN, J.) **(V.G.PALSHIKAR, J.)**